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NSMG SHARED SERVICES, LLC
(Sued herein erroneously as Northstar Memorial
Group; Northstar Memorial Group d/b/a Chapel of
the Chimes; Chapel of the Chimes; and NSMG
Shared Services, LLC d/b/a Northstar Memorial
Group Shared Services LLC)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

WILLIAM USCHOLD and TYRONE
DANGERFIELD, each individually and on
behalf of others similarly situated,

Plaintiffs,

v.

NORTHSTAR MEMORIAL GROUP, et
al.,

Defendants.

Case No.

**DEFENDANT'S NOTICE TO FEDERAL
COURT OF REMOVAL OF CIVIL
ACTION TO FEDERAL COURT**

[28 U.S.C. §§ 1332, 1441, & 1446]

Trial Date: None set

Complaint filed: January 17, 2018

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA, PLAINTIFFS WILLIAM USCHOLD AND TYRONE
DANGERFIELD, AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Defendant NSMG Shared Services, LLC ("Defendant")(Sued
herein erroneously as Northstar Memorial Group; Northstar Memorial Group d/b/a Chapel of the
Chimes; Chapel of the Chimes; and NSMG Shared Services, LLC d/b/a Northstar Memorial Group

Shared Services LLC) hereby removes the above-captioned cause of action brought by Plaintiffs William Uschold and Tyrone Dangerfield (collectively, "Plaintiffs") in the Superior Court of the State of California, County of Alameda to the United States District Court for the Northern District of California.

This removal is based on 28 U.S.C. §§ 1441 and 1446. This Notice is based upon the original jurisdiction of this Court over the parties under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), based on the following grounds:

I. STATEMENT OF JURISDICTION

1. This Court has original jurisdiction over this action under the CAFA, 28 U.S.C. § 1332(d). CAFA grants district courts original jurisdiction over civil class actions filed under federal or state law in which any member of a class of plaintiffs is a citizen of a state different from any defendant and where the amount in controversy for the putative class members in the aggregate exceeds the sum or value of \$5,000,000, exclusive of interest and costs. CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446.

2. This Court has jurisdiction over this case under CAFA, 28 U.S.C. § 1332(d), and this case may be removed pursuant to the provisions of 28 U.S.C. § 1441(a), because it is a civil class action in which: (1) the putative class contains at least 100 members; (2) Defendant is not a state, state official or other governmental entity; (3) the total amount in controversy for all putative class members exceeds \$5,000,000 exclusive of interest and costs; and (4) there is diversity between at least one putative class member and Defendant.

3. CAFA's diversity requirement is satisfied when at least one plaintiff is a citizen of a state in which the defendant is not a citizen. 28 U.S.C. §§ 1332(d)(2)(A), 1453.

4. As set forth below, this case meets all of CAFA's requirements for removal and is timely and properly removed by filing of this Notice.

II. VENUE

5. The action was filed in the Superior Court for the State of California for the County of Alameda. Venue properly lies in the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 84(a), 1391, 1441(a) and 1446.

III. STATUS OF PLEADINGS, PROCESS AND ORDERS

6. On January 17, 2018, Plaintiffs William Uschold and Tyrone Dangerfield filed a class action complaint in the Superior Court of the State of California, County of Alameda, captioned *William Uschold and Tyrone Dangerfield, each individually and on behalf of others similarly situated v. Northstar Memorial Group, an Unincorporated Association; Northstar Memorial Group d/b/a Chapel of the Chimes, an Unincorporated Association; Chapel of the Chimes, an Unincorporated Association domiciled in California; NSMG Shared Services, LLC, a foreign California forfeited entity; NSMG Shared Services, LLC d/b/a Northstar Memorial Group Shared Services, LLC, a foreign California forfeited entity; and DOES 1-50 inclusive*, designated as Case No. HG 18889297 (herein referred to as the “Complaint”). A true and correct copy of the Complaint is attached to this Notice of Removal as **Exhibit A**. Plaintiffs and the members of the putative class they purport to represent are individuals who are or were previously employed by Defendant in California as commissioned employees (the “CALIFORNIA CLASS”) at any time during the period beginning on the date four (4) years before the filing of the Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). (Compl., ¶ 21). Plaintiffs also propose the California Class be subdivided into three sub-classes consisting of the following: (1) all putative class members that were allegedly not reimbursed for business expenses related to purported use of their personal vehicles and cell phones for business reasons; (2) all putative class members allegedly subjected to unlawful payroll deductions; and (3) all putative class members that were allegedly not provided with an accurate written commission agreement. (Compl., ¶ 21).

7. The Complaint asserts the following causes of action: (1) Unlawful Collection of Wages Earned (Cal. Lab. Code § 221); (2) Unauthorized Deduction of Wages (Cal. Lab. Code § 224); (3) Failure to Reimburse For All Necessary And Reasonable Business Expenses (Cal. Lab. Code § 2802); (4) Failure to Pay Wages (Cal. Lab. Code §§ 510, 1194); and (5) Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*).

8. Defendant’s agent for service of process was served on January 18, 2018, with the Complaint, together with the accompanying Summons and pleadings. True and correct copies of the Summons and accompanying documents are attached collectively as **Exhibit B: Summons, Civil**

Case Cover Sheet, Complaint, Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Package and Stipulation.

9. On February 15, 2018, Defendant filed an Answer to the Complaint, a true and correct copy of which is attached hereto as **Exhibit C**.

10. Because the Doe defendants have not yet been served, they need not join or consent to Defendant's Notice of Removal. *Salveson v. Western States Bankcard Ass'n*, 731 F.2d 1426, 1429 (9th Cir. 1984) (named defendants not yet served in state court action need not join the notice of removal). Furthermore, CAFA permits any defendant to unilaterally remove the action if the requirements of CAFA for removal are met, as they are here. *See* 28 U.S.C. §1453(b).

11. To Defendant's knowledge, no further process, pleadings, or orders related to this case have been filed in the Superior Court of California, County of Alameda.

IV. TIMELINESS OF REMOVAL

12. An action may be removed from state court by filing a notice of removal, together with a copy of all process, pleadings, and orders served on the defendant, within 30 days of defendant receiving the initial pleading. *See* 28 U.S.C. § 1446(b); *Murphy Bros, Inc. v. Mitchetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the 30-day removal period runs from the service of the summons and complaint). Removal of this action is timely because Notice has been filed within 30 days from January 18, 2018, when Defendant was served with the Complaint and first became aware that the action was removable. 28 U.S.C. § 1446(b). Because Plaintiffs personally served the Summons and Complaint upon Defendant's agent for service of process on January 18, 2018, the thirty-day period for removal is Saturday, February 17, 2018.

13. Pursuant to Fed. R. Civ. P. 6(a)(1)(C), when the last day of the period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday, therefore the period is extended to Tuesday, February 20, 2018, because Monday, February 19, 2018 is President's Day and thus a legal holiday. *See* Fed. R. Civ. P. 6(a)(1)(A)(5) (requiring deadlines "count every day, including intermediate Saturdays, Sundays, and legal holidays ... but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday"). Further, "next

day” is “determined by continuing to count forward when the period is measured after an event and backward when measured before an event.” *See id.* Thus, this Notice of Removal is timely-filed. *See Fleming v. United Teacher Assocs. Ins. Co.*, 250 F. Supp. 2d 658, 660-661 (D.W. Va. 2003) (removal filed on 31 days timely when final day was a holiday); *Johnson v. Harper*, 66 F.R.D. 103, 105 (E.D. Tenn. 1975) (same); *see also Agavni Pogosyan v. U.S. Bank Trust National Association et al.*, Case No.: CV 15-07085-AB [2015 WL 12696188 *2] (C.D. Cal. 2015) (same); *Williams v. Leonard*, No. C02-05084 CRB [2003 WL 163183 *1] (N.D. Cal. 2003) (same) As referenced above, this Notice also contains all process, pleadings and orders that were served on Defendant, and the Answer served by Defendant on February 15, 2018. (*See Exhibits A-C.*)

V. THIS CASE MEETS CAFA’S REMOVAL REQUIREMENTS

A. The Putative Class Contains At Least 100 Members

14. CAFA provides this Court with jurisdiction over a class action when “the number of members of all proposed plaintiff classes in the aggregate [is not] less than 100.” 28 U.S.C. §1332(d)(5)(B). CAFA defines “class members” as those “persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.” 28 U.S.C. §1332(d)(1)(D).

15. Plaintiffs seek to represent all current and former commissioned employees who held the same job titles as the Plaintiffs and were employed by Defendant in the State of California from January 18, 2013 through the resolution of this action. (Compl., ¶ 21).

16. Defendant employed at least 107 current and former employees who held the same job titles as the Plaintiffs who received commissions and resided in the State of California between January 18, 2013 and the present. (Declaration of Brian Davis (“David Decl.”), ¶ 7.). They are included in the putative class for purposes of removal based on Plaintiffs’ allegations. Accordingly, the alleged putative class contains at least 100 members.

B. Defendant is Not a Governmental Entity

17. Defendant is not a state, state official, or other governmental entity.

C. Diversity of Citizenship Exists Here

18. The diversity of citizenship statute provides in pertinent part that “[t]he district courts shall have original jurisdiction of all civil actions where the amount in controversy exceeds the sum

1 or value of \$75,000, exclusive of interest and costs, and is between – (1) citizens of different
 2 States....” 28 U.S.C. §1332(a). CAFA diversity jurisdiction exists if “*any* member of a class of
 3 plaintiffs is a citizen of a State different from *any* defendant.” 28 U.S.C. § 1332(d)(2)(A) (emphasis
 4 added).

5 19. For diversity purposes, a person is a “citizen” of the state in which he or she is
 6 domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir. 1983); *see also LeBlanc v.*
 7 *Cleveland*, 248 F.3d 95, 100 (2d Cir. 2001) (citizenship determined at the time the lawsuit is filed);
 8 *see also Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8, 10 (1st Cir. 1991). A person’s
 9 domicile is the place he or she resides with the intention to remain, or to which he or she intends to
 10 return. *District of Columbia v. Murphy*, 314 U.S. 441, 455 (“a place where a man lives is properly
 11 taken to be his domicile until the facts adduced establish the contrary”); *Guterman v. Wachovia*
 12 *Mortgage*, 2011 U.S. Dist. LEXIS 74251, *4 (C.D. Cal. Mar. 31, 2011) (plaintiff’s residence and
 13 ownership of property is sufficient to establish his domicile); *see also, Kanter v. Warner-Lambert*
 14 *Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

15 20. Defendant’s records indicate that Plaintiffs were both residents of California during
 16 their employment with Defendant. (Davis Decl., ¶ 7.). Plaintiffs’ Complaint fails to allege their
 17 state of residency, though it lists the Defendant’s California locations where Plaintiffs purportedly
 18 worked. (Compl., ¶ 9).

19 21. For purposes of diversity jurisdiction, a corporation is deemed a citizen of its state of
 20 incorporation and the state where it has its principal place of business. 28 U.S.C. §1332(c)(1). A
 21 corporation’s principal place of business is defined as the place “where a corporation’s officers
 22 direct, control, and coordinate the corporation’s activities,” and “refers to the place where a
 23 corporation’s high level officers direct, control, and coordinate the corporation’s activities, *i.e.*, its
 24 ‘nerve center,’ which will typically be found at its corporate headquarters.” *Hertz Corp. v. Friend*,
 25 130 U.S. 1181, 1192-93 (2010).

26 22. NSMG Shared Services, LLC, is the only properly named Defendant to this action.
 27 NSMG Shared Services, LLC, is incorporated under the laws of the state of Delaware and maintains
 28 its principal place of business in Houston, Texas. (Davis Decl., ¶¶ 3-4 .).

23. Defendant has its headquarters at 1900 St. James Place, Suite 300, Houston, Texas. (*Id.*) Defendant NSMG Shared Services, LLC, has its operations management, human resources, finance, information technology, distribution operations, legal, and sales and marketing managed from its Houston, Texas headquarters. (*Id.*) Most of the company-wide decisions relating to Defendant NSMG Shared Services, LLC, are made from Houston, Texas. (Davis Decl., ¶¶ 4-5.). The types of corporate decisions made in Houston, Texas include, but are not limited to: decisions regarding company policy; decisions regarding the purchase, financing and leasing of real properties; legal decisions; significant decisions regarding contracts and other purchasing; decisions regarding NSMG Shared Services, LLC's press releases and public affairs; decisions regarding banking relationships and cash management accounts; decisions regarding payroll; decisions regarding revenue management; decisions regarding safety and security policy-making; and policy decisions regarding advertising and marketing. (Davis Decl., ¶ 5.). Therefore, the "nerve center" and, thus, the principal place of business of Defendant NSMG Shared Services, LLC, is located in Houston, Texas. *E.g. Hertz*, 130 U.S at 1192.

24. Other than NSMG Shared Services, LLC, the remaining Defendants identified in Plaintiff's Complaint do not exist.

25. At the time the action was commenced, and presently, an entity named Northstar Memorial Group does not exist under the laws of any state and does not maintain a principal place of business, and therefore is an erroneously named defendant to this action. (Davis Decl., ¶ 8.).

26. Similarly, Northstar Memorial Group d/b/a Chapel of the Chimes is an erroneously named defendant to this action. (Davis Decl., ¶ 9.).

27. Chapel of the Chimes is not an existing legal entity under the laws of any state and does not maintain a principal place of business, and therefore is an erroneously named defendant to this action. (Davis Decl., ¶ 10.).

28. NSMG Shared Services LLC d/b/a Northstar Memorial Group Shared Services, LLC, is also not an existing legal entity under the laws of any state and does not maintain a principal place of business, and therefore is an erroneously named defendant to this action. NSMG Shared Services

1 LLC is not registered as doing business under the fictitious name “Northstar Memorial Group Shared
2 Services, LLC.” (Davis Decl., ¶ 11.).

3 29. Because Plaintiffs and NSMG Shared Services, LLC are citizens of different states,
4 this action meets CAFA’s diversity requirements.

5 **D. The Amount in Controversy Exceeds \$5,000,000**

6 30. CAFA authorizes the removal of class actions in which, among other factors
7 mentioned above, the amount in controversy for all class members exceeds \$5,000,000, exclusive of
8 interests and costs. 28 U.S.C. §1332(d). “The claims of the individual class members shall be
9 aggregated to determine whether the matter in controversy exceeds” this amount. 28 U.S.C.
10 §1332(d)(6).

11 31. The removal statute requires that a defendant seeking to remove a case to federal
12 court must file a notice “containing a short and plain statement of the grounds for removal.” 28
13 U.S.C. §1446(a). The United States Supreme Court in *Dart Cherokee Basin Operating Co., LLC v.*
14 *Owens*, 135 S. Ct. 547, 554 (2014), recognized that “as specified in section 1446(a), a defendant’s
15 notice of removal need include only a plausible allegation that the amount in controversy exceeds
16 the jurisdictional threshold.” Only if the plaintiff contests or the court questions the allegations of
17 the notice of removal is supporting evidence required. *Id.* Otherwise, “the defendant’s amount in
18 controversy allegation should be accepted” just as plaintiff’s amount in controversy allegation is
19 accepted when a plaintiff invokes federal court jurisdiction. *Id.* at 553. “[N]o antiremoval
20 presumption attends cases invoking CAFA.” *Id.* at 554.

21 32. In the Prayer for Relief, Plaintiffs allege damages in the amount of \$7,200,000,
22 exclusive of interest and costs, and thus the alleged damages exceed CAFA’s \$5,000,000 threshold.
23 (Compl., Prayer for Relief). For purposes of determining whether the amount in controversy has
24 been satisfied, the Court must presume that the Plaintiff will prevail on his claims. *Kenneth*
25 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (citing
26 *Burns v. Windsor Ins. Co.*, 31 F. 3d 1092, 1096 (11th Cir. 1994) (stating that the amount in
27 controversy analysis presumes that “plaintiff prevails on liability.”) The ultimate inquiry is what
28 amount is put “in controversy” by plaintiff’s complaint, not what defendant might actually owe.

Rippee v. Boston Market Corp., 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005); *accord Ibarra v. Manheim Investments, Inc.* 775 F.3d 1193, 1198 n. 1 (9th Cir. 2015) (explaining that even when the court is persuaded the amount in controversy exceeds \$5,000,000, defendants are still free to challenge the actual amount of damages at trial because they are only estimating the amount in controversy).

33. Because the named Plaintiffs and Defendant are diverse and the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, this Court has original diversity jurisdiction pursuant to the CAFA.

VI. NOTICE TO PLAINTIFFS AND STATE COURT

34. Contemporaneously with the filing of this Notice in this Court, written notice of such filing will be provided to Plaintiffs' counsel of record, Benjamin Law Group, P.C.

A COPY OF THIS NOTICE OF REMOVAL WILL ALSO BE FILED WITH THE CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA.

VII. CONCLUSION

35. WHEREFORE, having provided notice as required by law, Defendant hereby removes the action now pending against it in the Superior Court of the State of California, County of Alameda, to this Honorable Court, and requests that this Court retain jurisdiction for all further proceedings.

Dated: February 16, 2018

/s/ JoAnna L. Brooks

JOANNA L. BROOKS

MICHAEL W. NELSON

LITTLER MENDELSON, P.C.

Attorneys for Defendant

NSMG SHARED SERVICES, LLC

(Sued herein erroneously as Northstar Memorial Group; Northstar Memorial Group d/b/a Chapel of the Chimes; Chapel of the Chimes; and NSMG Shared Services, LLC d/b/a Northstar Memorial Group Shared Services LLC)

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EXHIBIT A

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FILED
 ALAMEDA COUNTY

JAN 17 2018

CLERK OF THE SUPERIOR COURT
 1001 CENTRAL EXPRESSWAY
 OAKLAND, CA 94612

Attorneys for Plaintiffs Uschold, et al.

SUPERIOR COURT OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA

WILLIAM USCHOLD and TYRONE
 DANGERFIELD, each individually and on
 behalf of others similarly situated,

Plaintiff.

vs.

NORTHSTAR MEMORIAL GROUP, an
 Unincorporated Association; NORTHSTAR
 MEMORIAL GROUP d/b/a CHAPEL OF THE
 CHIMES, an Unincorporated Association;
 CHAPEL OF THE CHIMES, an
 Unincorporated Association domiciled in
 California; NSMG SHARED SERVICES, LLC,
 a foreign California forfeited entity; NSMG
 SHARED SERVICES, LLC d/b/a
 NORTHSTAR MEMORIAL GROUP
 SHARED SERVICES, LLC, a foreign
 California forfeited entity; and DOES 1-50,
 inclusive,

Defendants..

CASE NO.

HL 188892.7

UNLIMITED CIVIL COMPLAINT

CLASS AND REPRESENTATIVE
 ACTION

Complaint For:

- (1) Unlawful Collection of Wages
 Earned Under Cal. Lab. Code
 Section 221;
- (2) Unauthorized Deduction Under
 Cal. Lab. Code Section 224;
- (3) Failure to Reimburse For All
 Necessary and Reasonable
 Expenditures And Losses Under
 Cal. Lab. Code Section 2802;
- (4) Violation of Cal. Business &
 Professions Code Section 17200;
- (5) Failure to Pay Wages Under Cal.
 Lab. Code Section 510 *et seq.*

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Individual and representative Plaintiffs, TYRONE DANGERFIELD and WILLIAM
3 USCHOLD bring this class and representative action on behalf of themselves and all of the
4 commissioned employees ("Employees") employed by Defendants NORTHSTAR MEMORIAL
5 GROUP, an Unincorporated Association; NORTHSTAR MEMORIAL GROUP d/b/a CHAPEL
6 OF THE CHIMES, an Unincorporated Association; CHAPEL OF THE CHIMES, an
7 Unincorporated Association domiciled in California; NSMG SHARED SERVICES, LLC, a
8 foreign California forfeited entity; NSMG SHARED SERVICES, LLC d/b/a NORTHSTAR
9 MEMORIAL GROUP SHARED SERVICES, LLC, a foreign California forfeited entity; and
10 DOES 1-50, inclusive, from the date four years prior to filing this Complaint through the date of
11 trial in this action.

12 2. Defendants violate the California Labor Code through their commission payment
13 system. On a weekly basis, Defendants advance commission or "points" to Employees who must
14 meet the quota set by Defendants to actually earn the commission. If the quota is unmet,
15 Defendants recoup or "chargeback" the commission each week. The chargebacks are cumulative
16 so that an Employee may still owe a chargeback on a week he did earn the commission. Yet, if an
17 Employee exceeds the quota, his excess commission or points are neither paid nor accumulated to
18 offset future weeks. Defendants set the quota based on a 40-hour work week regardless of whether
19 an Employee actually works 40 hours in a week. Moreover, Plaintiffs were unaware of the terms
20 of the commission system and its operation until several months into employment. Additionally,
21 Defendants required or knew that Employees used personal property for work including personal
22 vehicles for travel to meet with clients and prospective clients and personal cell phones for
23 business calls. Defendants failed to reimburse all necessary and reasonable business expenses as
24 required by California law. Defendants have violated numerous Labor Code provisions in its
25 operation of the commission system without express authorization from Employees and resulting in
26 unlawful deductions of earned commissions as well as its failure to reimburse Employees when
27 they incurred business-related expenses. Plaintiffs also allege that these acts, which violate the
28 California Labor Code, constitute unlawful and unfair business practices in violation of California

1 Unfair Competition Laws ("UCL"). Plaintiffs also claim civil penalties for the above acts, and
2 upon proof of Defendants' failures to pay minimum wage and overtime for non-exempt employees
3 that do not satisfy the outside salesperson requirements.

4 3. In this action, Plaintiffs, on behalf of themselves and all class members, seek unpaid
5 wages, reimbursement for necessary and reasonable business expenses, statutory penalties,
6 injunctive relief, attorneys' fees and costs, prejudgment interest, and other relief the court may
7 deem appropriate.

8 4. The "Class Period" is designated as the time from four years prior to filing this
9 Complaint through the date of trial based upon the allegations that the violations of the Labor Code
10 and the UCL have been ongoing since at least four years prior to the date of this Complaint and are
11 continuing.

12 **JURISDICTION AND VENUE**

13 5. Jurisdiction is proper because Defendants operated as employers in the State of
14 California. This Court has jurisdiction over the Labor Code claims relating to the commission
15 system and unpaid wages pursuant to Labor Code sections 510 and 1194; and over the claims for
16 failure to reimburse necessary and reasonable business expenses pursuant to Labor Code section
17 2802.

18 6. Venue in Alameda County is appropriate under California Code of Civil Procedure
19 section 395(a) because the unlawful practices alleged herein were committed in the County of
20 Alameda; Defendants and/or DOES 1-50 maintain offices in the County of Alameda, and Plaintiffs
21 worked for Defendants in the County of Alameda.

22 **PARTIES**

23 **I. Individual Plaintiffs.**

24 7. Plaintiff William Uschold was employed by Defendants from around May 24, 2017
25 until Defendants unilaterally terminated his employment in or around November 2017. Uschold
26 was induced to work for Defendants by representations from Regional Manager Robin Russell who
27 promised Uschold a position as a Regional Manager, an off-site office, and a budget for his sales
28

1 team. Instead, Uschold was hired to the lower-ranking position of Outside Supervisor and his
 2 primary job duties was supervision of telemarketing employees and outside representatives.
 3 Uschold was subject to Defendants' commission system as were all employees he supervised.
 4 Uschold worked out of Defendants' offices in Oakland, CA, Hayward, CA and Half Moon Bay,
 5 CA. Plaintiff Tyrone Dangerfield was employed with Defendants from May 24, 2017 to around
 6 October 9, 2017. Dangerfield worked in the position of Family Services Counselor at Defendants'
 7 location in Hayward, CA. Dangerfield's job duties included client relations, administration, and
 8 correspondence for funeral service arrangements and burial product purchases.

9 II. Defendants.

10 8. On information and belief, Defendant CHAPEL OF THE CHIMES is a California
 11 business operating in Hayward, CA located in Alameda County. CHAPEL OF THE CHIMES is
 12 also a California business association pursuant to Code of Civil Procedure section 369.5 known as
 13 Chapel of the Chimes with its home and principal places of business in Hayward, California.
 14 Defendant NSMG SHARED SERVICES, LLC is registered as a foreign entity in California but its
 15 status has been forfeited. A forfeited entity is prohibited from doing business in California. It is
 16 also unlawful for such an entity to appear in a California court, through counsel, or otherwise while
 17 it has a forfeited corporate status. *See* California Revenue and Taxation Code § 23301; California
 18 Corporations Code § 2203(c).

19 9. Plaintiffs are informed and believe that Defendant NORTHSTAR MEMORIAL
 20 GROUP is an unincorporated association under Code of Civil Procedure section 369.5 and it does
 21 business as Northstar Memorial Group and as Chapel of the Chimes and as NSMG Shares
 22 Services, LLC. Each unincorporated association is domiciled in Hayward, California
 23 notwithstanding an ambiguous corporate relationship to other Texas-based corporate entities.

24 10. NSMG Shared Services, LLC also does business in California as North Star
 25 Memorial Group Shared Services, LLC.

26 11. Upon information and belief, all Defendants are joint employers and a joint
 27 corporation operating and employing California citizens under the laws of the state of California
 28

1 throughout the state of California. Defendants' Bay Area business operates as Chapel of the
 2 Chimes; including numerous deviations of this name. Defendants operate under additional names
 3 throughout California and employ class members in these locations, amongst others: Accucare
 4 Cremation and Funerals in San Diego, Carlsbad, and Fullerton); Chapel of the Chimes Mortuary,
 5 Crematory and Cemetery (Hayward); Chapel of the Chimes Mortuary, Crematory and
 6 Columbarium (Oakland); Claremont Mortuary (San Diego); Greenwood Mortuary, Crematory and
 7 Memorial Park (San Diego); Skylawn Funeral Home, Crematory and Memorial Park (San Mateo);
 8 Smart Cremation California (Rancho Mirage); Sunset Lawn/Chapel of the Chimes Mortuary, and
 9 Crematory and Cemetery (Sacramento). Defendants shall be referred to as "COC" or Chapel of the
 10 Chimes throughout the remainder of this Complaint.

11 12. Defendants DOES 1-50 are sued herein under fictitious names. Their true names and
 12 capacities, whether individual, corporate, associate, or otherwise, are unknown to Plaintiffs.
 13 Plaintiffs are informed and believe and based thereon allege that each of the Defendants sued
 14 herein as a Doe is responsible in some manner for the events and happenings herein set forth and
 15 proximately caused injury and damages, and any reference to "Defendant" shall mean "Defendants,
 16 and each of them." Plaintiffs will amend this complaint to show their true names and capacities
 17 when they have been ascertained.

18 **FACTUAL BACKGROUND**

19 **I. Commission-Based Payment System.**

20 13. COC purports to initially provide its Employees with a base compensation at the
 21 applicable minimum wage, plus commissions based on the value of products and services sold.
 22 The commission system is referred to as "Production Incentive Pay" which utilizes a point system
 23 to denote each sales dollar earned.

24 14. Commission pay is supposed to be earned on a weekly basis. However, COC
 25 advances Employees 42,000 points each week which equates to a quota of \$420.00 in products and
 26 services the employee is supposed to sale each week. Due to the higher minimum wage in
 27 Oakland, COC advances Employees at its Oakland, CA location 52,000 points a week which
 28 equates to a quota of \$520.00 in products and services. The Employees must meet the quota each

1 week to actually earn the commission. If an Employee fails to meet the quota any week, the
2 difference between the quota and what was actually earned by the Employee is charged back to the
3 employee. These chargebacks are cumulative and stack-up each week an employee does not reach
4 quota. Thus, if an Employee fails to reach quota in the first week of the month, the Employee will
5 have a negative balance regardless of whether that employee worked 40 hours, missed work due to
6 illness or vacation, or actually worked 50 hours in that week. However, if an Employee exceed the
7 quota, those excess points are lost and no additional compensation is actually provided.

8 15. COC immediately imposed the commission point system on Plaintiffs without
9 written notice, explanation, or agreement. Plaintiffs Uschold and Dangerfield received training
10 during the first two weeks of their employment working only 20 hours per week. COC accounted
11 the full 42,000 points (based on a 40-hour work week) against Plaintiffs during their training weeks
12 without their knowledge. Plaintiffs were not made aware of the commission system and point debt
13 until three months into their employment.

14 16. Plaintiffs received no other forms of compensation from COC. This compensation
15 system was "rolled-out" to all sales employees throughout the state of California.

16 **II. Work Related Use of Personal Property.**

17 17. Plaintiff Uschold was tasked with sales and supervision of employees who
18 conducted sales. Uschold knows that COC required sales employees throughout California to
19 travel to COC's various locations, to meet with current and prospective clients at their homes, and
20 to travel around each COC location which all include large burial ground areas. These Employees
21 used their personal vehicles for travel incurring costs including, but not limited to, gas, vehicle
22 registration, maintenance, and toll fare.

23 18. COC's policy is to not reimburse sales employees for use of their personal vehicles
24 in the course of their job duties. COC does not provide a company vehicle but requires these
25 employees to travel in order to perform their job duties.

26 19. Plaintiffs Uschold and Dangerfield were required to incur these same costs and
27 expenses as sales employees when required to visit clients or prospective clients at their homes to
28 complete tasks like paperwork and authorizations. These types of travel and visits were routine

1 and customary for COC sales employees in the state of California. This includes the use of cell
2 phones to perform these essential job functions.

3 20. Plaintiffs' compensation did not include reimbursement for any work-related
4 expenses.

5 **CLASS AND REPRESENTATIVE ACTION**

6 21. Pursuant to California Code of Civil Procedure § 382, this action is brought as a
7 representative action as to claims for unlawful wage deductions and failure to reimburse necessary
8 and reasonable business expenses under the Labor Codes and UCL. Plaintiffs are representative of
9 other commissioned employees and are acting on behalf of their interests. The similarly situated
10 employees are known to COC and readily identifiable through COC's own records. The Class
11 Plaintiffs seek to represent is defined as:

12 All former and current commissioned employees ("Class Members")
13 employed by Defendants within the State of California within four years of
the filing of this Complaint until the entry of judgment after trial.

14 Plaintiffs also propose that the Class will be subdivided into three sub-classes consisting of:

15 **(1) all Class members that were not reimbursed for reasonable and**
16 **necessary costs incurred in relationship to the use of personal property**
17 **as required by California law; including, but not limited to, gas, mileage,**
insurance, vehicle registration, and toll fare, for personal vehicle use; and
monthly payment for cell phone use;

18 (2) all Class members subjected to unlawful payroll deductions; and

19 (3) all Class members that were not provided an accurate written
20 commission agreement.

21 Membership in one subclass is not mutually exclusive of membership in the other subclass,
22 Plaintiffs believe that many or most Class members are members of all subclasses.

23 22. The persons in the Class, and in each subclass, are so numerous that joinder is
24 impracticable, and the disposition of these claims in a class action rather than in individual actions
25 will benefit the parties and the Court. On information and belief, the Class consists of more than 50
26 people. Plaintiffs further allege, based on information and belief, that there is not less than 5 people
27 in each subclass.

28 23. There is a well-defined community of interest in common questions of law and fact.

1 Common questions of law and fact include questions raised by the individual Plaintiffs' allegations
2 that Defendants failed to reimburse necessary and reasonable business expenses and unlawfully
3 deducted wages in violation of various state laws. The common questions apply to the Class in that
4 they are all subject to the same policies, acts, and omissions of Defendants. Common questions of
5 law and fact include:

- 6 a) Whether Defendants' failure to reimburse reasonable and necessary travel expenses
7 incurred violates Labor Code § 2802;
- 8 b) Whether Defendants' failure to reimburse reasonable and necessary personal cell
9 phone use by its Employees work-related purposes violates Labor Code § 2802;
- 10 c) Whether Defendants' commission compensation method violates Labor Code § 221;
- 11 d) Whether Defendants' failure to obtain authorization and assent from Employees to
12 deduct from commission actually earned violates Labor Code § 224;
- 13 e) Whether Defendants' various violations of the Labor Code serve as predicate
14 violations of the UCL; and
- 15 f) Whether Defendants owe Employees waiting time penalties for failure to timely pay
16 all wages earned.

17 24. Common questions of law and fact predominate over any questions affecting only
18 individual Class members.

19 25. Plaintiffs' claims are typical of those of the claims of the Class as a whole because
20 the individual Plaintiffs are similarly affected by Defendants' policies, acts, and omissions.

21 26. Plaintiffs are adequate class representatives because they are directly affected by
22 Defendants' acts and omissions. Plaintiffs have no interests that conflict with or are antagonistic to
23 the interests of the Class. Plaintiffs and counsel are aware of their fiduciary responsibilities to the
24 Class members and have experience in representing clients in class and individual actions
25 involving employment rights.

26 27. There is no plain, speedy, or adequate remedy other than by maintenance of this
27 class action. The prosecution of individual remedies by members of the Class will tend to establish
28 inconsistent standards of conduct for the Defendants and result in the impairment of Class

1 members' rights and the disposition of their interests through actions to which they were not
2 parties.

3 28. References to Plaintiffs below shall include each individual Plaintiff and each
4 member of the proposed Class, unless otherwise indicated.

5 **FIRST CAUSE OF ACTION**

6 **UNLAWFUL DEDUCTION OF WAGES UNDER LABOR CODE SECTION 221**

7 **(All Plaintiffs Against All Defendants)**

8 29. Plaintiffs re-allege and incorporate paragraphs 1 through 28 inclusive, of this
9 Complaint as though fully set forth herein.

10 30. Defendants' commission system resulted in deductions from commission actually
11 earned by operation of its rollover points system for weeks an Employee did not meet the set quota.
12 Once a commission is earned, it is considered a wage which is unlawful for an employer to recoup.
13 *See Koehl v. Verio, Inc.* (2006) 142 Cal. App. 4th 1313, 1329-1337. Furthermore, Defendants
14 accumulated the deficit points against Employees but not commission points earned in excess of
15 the quota.

16 31. As a result of Defendants' unlawful policies and acts, Plaintiffs are owed unpaid
17 wages plus interest, penalties, and attorneys' fees and costs.

18 **SECOND CAUSE OF ACTION**

19 **UNAUTHORIZED DEDUCTION OF WAGES IN VIOLATION OF LABOR CODE**

20 **SECTION 224**

21 **(All Plaintiffs Against All Defendants)**

22 32. Plaintiffs re-allege and incorporate paragraphs 1 through 31, inclusive, of this
23 Complaint as though fully set forth herein.

24 33. Defendants subjected Plaintiffs to its commission-based system without express
25 written consent or acknowledgement. As earlier alleged and explained, Defendants commission
26 policy operates to deduct from commissions actually earned. There is strong public policy
27 requiring an express agreement from the employee to an employer's right to recoup or charge back
28 commission under specific circumstances. *See Koehl*, 142 Cal. App. 4th at 1334. Thus, Defendants

1 failure to inform Plaintiffs of operation and terms of its commission system makes the deductions
2 to commissions earned unauthorized and unlawful.

3 34. As a result of Defendants' unlawful acts and omissions, Plaintiffs are owed unpaid
4 wages plus interest, penalties, and attorneys' fees and costs.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE FOR REASONABLE AND NECESSARY BUSINESS**

7 **EXPENSES UNDER LABOR CODE SECTION 2802**

8 **(All Plaintiffs Against All Defendants)**

9 35. Plaintiffs re-allege and incorporate paragraphs 1 through 34, inclusive, of this
10 Complaint as though fully set forth herein.

11 36. Defendants have failed to reimburse Plaintiffs for costs and expenses the Plaintiffs
12 incurred when they were required to use their personal property as a necessary part of performing
13 their job duties for Defendants thereby relieving Defendants of those business expenses.

14 37. As a result of the unlawful acts of Defendants, and each of them, Plaintiffs and the
15 Class are owed expense reimbursement in amounts to be proven at trial, and are entitled to
16 recovery of such amounts, plus interest, penalties, and attorney's fees and costs.

17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAWS, CAL. BUSINESS &**

19 **PROFESSIONS CODE SECTION 17200**

20 **(All Plaintiffs Against All Defendants)**

21 38. Plaintiffs re-allege and incorporate paragraphs 1 through 37, inclusive, of this
22 Complaint as though fully set forth herein.


23 39. By the conduct described above, Defendants have violated the provisions of the
24 Labor Code, and the Unfair Competition Law, codified at Business & Professions Code Sections
25 17200 et seq. by engaging in unfair, unlawful, and oppressive activity.

26 40. The unlawful and unfair business practices conducted by Defendants are ongoing
27 and present a threat and likelihood of continuing against Defendants' current employees.
28 Accordingly, Plaintiffs and the Class seek preliminary and permanent injunctive relief.

PRAYER FOR RELIEF

- a. For unpaid costs and expenses, according to proof in the amount of \$ 7,200,000.00;
- b. For restitution of unpaid costs and expenses pursuant to Business & Professions Code Sections 17200 et seq.;
- c. For interest at the maximum legal rate;
- d. For attorney's fees authorized by statute;
- e. For costs of suit incurred herein; and
- f. For such other and further relief as the Court may deem just and proper.

Benjamin Law Group, P.C.

By  _____

NA'IL BENJAMIN
Attorneys for Plaintiffs
William Uschold et al. . .

DEMAND FOR JURY TRIAL

43. Plaintiffs, on behalf of themselves and all others similarly situated, hereby requests
a jury trial on the claims so triable.

Dated: January 16, 2018

Benjamin Law Group, P.C.

By

NA'IL BENJAMIN
Attorneys for Plaintiffs

EXHIBIT B

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

NORTHSTAR MEMORIAL GROUP, an Unincorporated Association;
(additional parties attachment form [SUM-200(A)] is attached)

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

WILLIAM USCHOLD and TYRONE DANGERFIELD, each
individually and on behalf of others similarly situated.

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

RECORDED
FILED
ALAMEDA COUNTY
JAN 17 2018

CLERK OF THE SUPERIOR COURT
D. OLIVER, Deputy

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que lo quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de extensión de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y las costas exentas por imponer un gravamen sobre cualquier recuperación de \$10,000 o más del valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desahar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Alameda Superior Court

24405 Amador Street
Hayward, CA 94544; Hayward Hall of Justice

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Nail Benjamin; 1290 B St., Ste. 314 Hayward, CA 94541; (510) 897-9967

CASE NUMBER:
(Número de caso):

EC18889207

DATE: JAN 17 2018
(Fecha)

Chad Finko

Clerk, by
(Secretario)

D. OLIVER

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): NSMG Shared Services, LLC, a foreign California forfeited entity
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☒ other (specify): Corporation Code 17061
4. ☐ by personal delivery on (date):

SUM-200(A)

SHORT TITLE: Uschold, et. al. v. Northstar Memorial Group. et. al.	CASE NUMBER
--	--------------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

NORTHSTAR MEMORIAL GROUP d/b/a CHAPEL OF THE CHIMES, an Unincorporated Association;
 CHAPEL OF THE CHIMES, an Unincorporated Association domiciled in California; NSMG SHARED
 SERVICES, LLC, a foreign California forfeited entity; NSMG SHARED SERVICES, LLC d/b/a
 NORTHSTAR MEMORIAL GROUP SHARED SERVICES, LLC, a foreign California forfeited entity; and
 DOES 1-50, inclusive

Page 1 of 1

Page 1 of 1

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Na'il Benjamin, Esq. (SBN 240354); Allyssa Villanueva, Esq. (SBN 312935) BENJAMIN LAW GROUP 1290 B Street, Ste. 314 Hayward CA 94541 TELEPHONE NO. 510-897-9967 FAX NO. 510-439-2632 ATTORNEY FOR (Name): William Uschold and Tyrone Dangerfield		FOR COURT USE ONLY JAN 17 2018 CLERK OF THE SUPERIOR COURT By: [Signature]
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 24405 Amador Street MAILING ADDRESS: CITY AND ZIP CODE: Hayward, CA 94544 BRANCH NAME: Hayward Hall of Justice		
CASE NAME: William Uschold, et. al. v. Northstar Memorial Group, et. al., DOES 1-50		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: 18009207 JUDGE: DEPT:
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PUPDWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PUPDWD (23) Non-PUPDWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PUPDWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (26) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary, declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): FIVE

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 16, 2018

NA'IL BENJAMIN

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PUPD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PUPD/WD

Non-PUPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (18)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PUPD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage

Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review

Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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 Facsimile: (510) 439-2632

Attorneys for Plaintiffs Uschold, et al.

FILED
 ALAMEDA COUNTY
 JAN 17 2018
 CLERK OF SUPERIOR COURT
 1500 COURT ST.

**SUPERIOR COURT OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA**

**WILLIAM USCHOLD and TYRONE
 DANGERFIELD, each individually and on
 behalf of others similarly situated,**

Plaintiff.

vs.

**NORTHSTAR MEMORIAL GROUP, an
 Unincorporated Association; NORTHSTAR
 MEMORIAL GROUP d/b/a CHAPEL OF THE
 CHIMES, an Unincorporated Association;
 CHAPEL OF THE CHIMES, an
 Unincorporated Association domiciled in
 California; NSMG SHARED SERVICES, LLC,
 a foreign California forfeited entity; NSMG
 SHARED SERVICES, LLC d/b/a
 NORTHSTAR MEMORIAL GROUP
 SHARED SERVICES, LLC, a foreign
 California forfeited entity; and DOES 1-50,
 inclusive,**

Defendants.

CASE NO.

HL 188892.7

UNLIMITED CIVIL COMPLAINT

**CLASS AND REPRESENTATIVE
 ACTION**

Complaint For:

- (1) Unlawful Collection of Wages
 Earned Under Cal. Lab. Code
 Section 221;**
- (2) Unauthorized Deduction Under
 Cal. Lab. Code Section 224;**
- (3) Failure to Reimburse For All
 Necessary and Reasonable
 Expenditures And Losses Under
 Cal. Lab. Code Section 2802;**
- (4) Violation of Cal. Business &
 Professions Code Section 17200;**
- (5) Failure to Pay Wages Under Cal.
 Lab. Code Section 510 et seq.**

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Individual and representative Plaintiffs, TYRONE DANGERFIELD and WILLIAM
3 USCHOLD bring this class and representative action on behalf of themselves and all of the
4 commissioned employees ("Employees") employed by Defendants NORTHSTAR MEMORIAL
5 GROUP, an Unincorporated Association; NORTHSTAR MEMORIAL GROUP d/b/a CHAPEL
6 OF THE CHIMES, an Unincorporated Association; CHAPEL OF THE CHIMES, an
7 Unincorporated Association domiciled in California; NSMG SHARED SERVICES, LLC, a
8 foreign California forfeited entity; NSMG SHARED SERVICES, LLC d/b/a NORTHSTAR
9 MEMORIAL GROUP SHARED SERVICES, LLC, a foreign California forfeited entity; and
10 DOES 1-50, inclusive, from the date four years prior to filing this Complaint through the date of
11 trial in this action.

12 2. Defendants violate the California Labor Code through their commission payment
13 system. On a weekly basis, Defendants advance commission or "points" to Employees who must
14 meet the quota set by Defendants to actually earn the commission. If the quota is unmet,
15 Defendants recoup or "chargeback" the commission each week. The chargebacks are cumulative
16 so that an Employee may still owe a chargeback on a week he did earn the commission. Yet, if an
17 Employee exceeds the quota, his excess commission or points are neither paid nor accumulated to
18 offset future weeks. Defendants set the quota based on a 40-hour work week regardless of whether
19 an Employee actually works 40 hours in a week. Moreover, Plaintiffs were unaware of the terms
20 of the commission system and its operation until several months into employment. Additionally,
21 Defendants required or knew that Employees used personal property for work including personal
22 vehicles for travel to meet with clients and prospective clients and personal cell phones for
23 business calls. Defendants failed to reimburse all necessary and reasonable business expenses as
24 required by California law. Defendants have violated numerous Labor Code provisions in its
25 operation of the commission system without express authorization from Employees and resulting in
26 unlawful deductions of earned commissions as well as its failure to reimburse Employees when
27 they incurred business-related expenses. Plaintiffs also allege that these acts, which violate the
28 California Labor Code, constitute unlawful and unfair business practices in violation of California

1 Unfair Competition Laws ("UCL"). Plaintiffs also claim civil penalties for the above acts, and
 2 upon proof of Defendants' failures to pay minimum wage and overtime for non-exempt employees
 3 that do not satisfy the outside salesperson requirements.

4 3. In this action, Plaintiffs, on behalf of themselves and all class members, seek unpaid
 5 wages, reimbursement for necessary and reasonable business expenses, statutory penalties,
 6 injunctive relief, attorneys' fees and costs, prejudgment interest, and other relief the court may
 7 deem appropriate.

8 4. The "Class Period" is designated as the time from four years prior to filing this
 9 Complaint through the date of trial based upon the allegations that the violations of the Labor Code
 10 and the UCL have been ongoing since at least four years prior to the date of this Complaint and are
 11 continuing.

12 **JURISDICTION AND VENUE**

13 5. Jurisdiction is proper because Defendants operated as employers in the State of
 14 California. This Court has jurisdiction over the Labor Code claims relating to the commission
 15 system and unpaid wages pursuant to Labor Code sections 510 and 1194; and over the claims for
 16 failure to reimburse necessary and reasonable business expenses pursuant to Labor Code section
 17 2802.

18 6. Venue in Alameda County is appropriate under California Code of Civil Procedure
 19 section 395(a) because the unlawful practices alleged herein were committed in the County of
 20 Alameda; Defendants and/or DOES 1-50 maintain offices in the County of Alameda, and Plaintiffs
 21 worked for Defendants in the County of Alameda.

22 **PARTIES**

23 **I. Individual Plaintiffs.**

24 7. Plaintiff William Uschold was employed by Defendants from around May 24, 2017
 25 until Defendants unilaterally terminated his employment in or around November 2017. Uschold
 26 was induced to work for Defendants by representations from Regional Manager Robin Russell who
 27 promised Uschold a position as a Regional Manager, an off-site office, and a budget for his sales
 28

1 team. Instead, Uschold was hired to the lower-ranking position of Outside Supervisor and his
2 primary job duties was supervision of telemarketing employees and outside representatives.
3 Uschold was subject to Defendants' commission system as were all employees he supervised.
4 Uschold worked out of Defendants' offices in Oakland, CA, Hayward, CA and Half Moon Bay,
5 CA. Plaintiff Tyrone Dangerfield was employed with Defendants from May 24, 2017 to around
6 October 9, 2017. Dangerfield worked in the position of Family Services Counselor at Defendants'
7 location in Hayward, CA. Dangerfield's job duties included client relations, administration, and
8 correspondence for funeral service arrangements and burial product purchases.

9 **II. Defendants.**

10 8. On information and belief, Defendant CHAPEL OF THE CHIMES is a California
11 business operating in Hayward, CA located in Alameda County. CHAPEL OF THE CHIMES is
12 also a California business association pursuant to Code of Civil Procedure section 369.5 knowns as
13 Chapel of the Chimes with its home and principal places of business in Hayward, California.
14 Defendant NSMG SHARED SERVICES, LLC is registered as a foreign entity in California but its
15 status has been forfeited. A forfeited entity is prohibited from doing business in California. It is
16 also unlawful for such an entity to appear in a California court, through counsel, or otherwise while
17 it has a forfeited corporate status. *See* California Revenue and Taxation Code § 23301; California
18 Corporations Code § 2203(c).

19 9. Plaintiffs are informed and believe that Defendant NORTHSTAR MEMORIAL
20 GROUP is an unincorporated association under Code of Civil Procedure section 369.5 and it does
21 business as Northstar Memorial Group and as Chapel of the Chimes and as NSMG Shares
22 Services, LLC. Each unincorporated association is domiciled in Hayward, California
23 notwithstanding an ambiguous corporate relationship to other Texas-based corporate entities.

24 10. NSMG Shared Services, LLC also does business in California as North Star
25 Memorial Group Shared Services, LLC.

26 11. Upon information and belief, all Defendants are joint employers and a joint
27 corporation operating and employing California citizens under the laws of the state of California
28

1 throughout the state of California. Defendants' Bay Area business operates as Chapel of the
 2 Chimes; including numerous deviations of this name. Defendants operate under additional names
 3 throughout California and employ class members in these locations, amongst others: Accucare
 4 Cremation and Funerals in San Diego, Carlsbad, and Fullerton); Chapel of the Chimes Mortuary,
 5 Crematory and Cemetery (Hayward); Chapel of the Chimes Mortuary, Crematory and
 6 Columbarium (Oakland); Claremont Mortuary (San Diego); Greenwood Mortuary, Crematory and
 7 Memorial Park (San Diego); Skylawn Funeral Home, Crematory and Memorial Park (San Mateo);
 8 Smart Cremation California (Rancho Mirage); Sunset Lawn/Chapel of the Chimes Mortuary, and
 9 Crematory and Cemetery (Sacramento). Defendants shall be referred to as "COC" or Chapel of the
 10 Chimes throughout the remainder of this Complaint.

11 12. Defendants DOES 1-50 are sued herein under fictitious names. Their true names and
 12 capacities, whether individual, corporate, associate, or otherwise, are unknown to Plaintiffs.
 13 Plaintiffs are informed and believe and based thereon allege that each of the Defendants sued
 14 herein as a Doe is responsible in some manner for the events and happenings herein set forth and
 15 proximately caused injury and damages, and any reference to "Defendant" shall mean "Defendants,
 16 and each of them." Plaintiffs will amend this complaint to show their true names and capacities
 17 when they have been ascertained.

18 **FACTUAL BACKGROUND**

19 **I. Commission-Based Payment System.**

20 13. COC purports to initially provide its Employees with a base compensation at the
 21 applicable minimum wage, plus commissions based on the value of products and services sold.
 22 The commission system is referred to as "Production Incentive Pay" which utilizes a point system
 23 to denote each sales dollar earned.

24 14. Commission pay is supposed to be earned on a weekly basis. However, COC
 25 advances Employees 42,000 points each week which equates to a quota of \$420.00 in products and
 26 services the employee is supposed to sale each week. Due to the higher minimum wage in
 27 Oakland, COC advances Employees at its Oakland, CA location 52,000 points a week which
 28 equates to a quota of \$520.00 in products and services. The Employees must meet the quota each

1 week to actually earn the commission. If an Employee fails to meet the quota any week, the
2 difference between the quota and what was actually earned by the Employee is charged back to the
3 employee. These chargebacks are cumulative and stack-up each week an employee does not reach
4 quota. Thus, if an Employee fails to reach quota in the first week of the month, the Employee will
5 have a negative balance regardless of whether that employee worked 40 hours, missed work due to
6 illness or vacation, or actually worked 50 hours in that week. However, if an Employee exceed the
7 quota, those excess points are lost and no additional compensation is actually provided.

8 15. COC immediately imposed the commission point system on Plaintiffs without
9 written notice, explanation, or agreement. Plaintiffs Uschold and Dangerfield received training
10 during the first two weeks of their employment working only 20 hours per week. COC accounted
11 the full 42,000 points (based on a 40-hour work week) against Plaintiffs during their training weeks
12 without their knowledge. Plaintiffs were not made aware of the commission system and point debt
13 until three months into their employment.

14 16. Plaintiffs received no other forms of compensation from COC. This compensation
15 system was "rolled-out" to all sales employees throughout the state of California.

16 **II. Work Related Use of Personal Property.**

17 17. Plaintiff Uschold was tasked with sales and supervision of employees who
18 conducted sales. Uschold knows that COC required sales employees throughout California to
19 travel to COC's various locations, to meet with current and prospective clients at their homes, and
20 to travel around each COC location which all include large burial ground areas. These Employees
21 used their personal vehicles for travel incurring costs including, but not limited to, gas, vehicle
22 registration, maintenance, and toll fare.

23 18. COC's policy is to not reimburse sales employees for use of their personal vehicles
24 in the course of their job duties. COC does not provide a company vehicle but requires these
25 employees to travel in order to perform their job duties.

26 19. Plaintiffs Uschold and Dangerfield were required to incur these same costs and
27 expenses as sales employees when required to visit clients or prospective clients at their homes to
28 complete tasks like paperwork and authorizations. These types of travel and visits were routine

1 and customary for COC sales employees in the state of California. This includes the use of cell
2 phones to perform these essential job functions.

3 20. Plaintiffs' compensation did not include reimbursement for any work-related
4 expenses.

5 **CLASS AND REPRESENTATIVE ACTION**

6 21. Pursuant to California Code of Civil Procedure § 382, this action is brought as a
7 representative action as to claims for unlawful wage deductions and failure to reimburse necessary
8 and reasonable business expenses under the Labor Codes and UCL. Plaintiffs are representative of
9 other commissioned employees and are acting on behalf of their interests. The similarly situated
10 employees are known to COC and readily identifiable through COC's own records. The Class
11 Plaintiffs seek to represent is defined as:

12 All former and current commissioned employees ("Class Members")
13 employed by Defendants within the State of California within four years of
the filing of this Complaint until the entry of judgment after trial.

14 Plaintiffs also propose that the Class will be subdivided into three sub-classes consisting of:

15 (1) **all Class members that were not reimbursed for reasonable and**
16 **necessary costs incurred in relationship to the use of personal property**
17 **as required by California law; including, but not limited to, gas, mileage,**
insurance, vehicle registration, and toll fare, for personal vehicle use; and
monthly payment for cell phone use;

18 (2) all Class members subjected to unlawful payroll deductions; and

19 (3) all Class members that were not provided an accurate written
20 commission agreement.

21 Membership in one subclass is not mutually exclusive of membership in the other subclass,
22 Plaintiffs believe that many or most Class members are members of all subclasses.

23 22. The persons in the Class, and in each subclass, are so numerous that joinder is
24 impracticable, and the disposition of these claims in a class action rather than in individual actions
25 will benefit the parties and the Court. On information and belief, the Class consists of more than 50
26 people. Plaintiffs further allege, based on information and belief, that there is not less than 5 people
27 in each subclass.

28 23. There is a well-defined community of interest in common questions of law and fact.

1 Common questions of law and fact include questions raised by the individual Plaintiffs' allegations
2 that Defendants failed to reimburse necessary and reasonable business expenses and unlawfully
3 deducted wages in violation of various state laws. The common questions apply to the Class in that
4 they are all subject to the same policies, acts, and omissions of Defendants. Common questions of
5 law and fact include:

- 6 a) Whether Defendants' failure to reimburse reasonable and necessary travel expenses
7 incurred violates Labor Code § 2802;
- 8 b) Whether Defendants' failure to reimburse reasonable and necessary personal cell
9 phone use by its Employees work-related purposes violates Labor Code § 2802;
- 10 c) Whether Defendants' commission compensation method violates Labor Code § 221;
- 11 d) Whether Defendants' failure to obtain authorization and assent from Employees to
12 deduct from commission actually earned violates Labor Code § 224;
- 13 e) Whether Defendants' various violations of the Labor Code serve as predicate
14 violations of the UCL; and
- 15 f) Whether Defendants owe Employees waiting time penalties for failure to timely pay
16 all wages earned.

17 24. Common questions of law and fact predominate over any questions affecting only
18 individual Class members.

19 25. Plaintiffs' claims are typical of those of the claims of the Class as a whole because
20 the individual Plaintiffs are similarly affected by Defendants' policies, acts, and omissions.

21 26. Plaintiffs are adequate class representatives because they are directly affected by
22 Defendants' acts and omissions. Plaintiffs have no interests that conflict with or are antagonistic to
23 the interests of the Class. Plaintiffs and counsel are aware of their fiduciary responsibilities to the
24 Class members and have experience in representing clients in class and individual actions
25 involving employment rights.

26 27. There is no plain, speedy, or adequate remedy other than by maintenance of this
27 class action. The prosecution of individual remedies by members of the Class will tend to establish
28 inconsistent standards of conduct for the Defendants and result in the impairment of Class

1 members' rights and the disposition of their interests through actions to which they were not
2 parties.

3 28. References to Plaintiffs below shall include each individual Plaintiff and each
4 member of the proposed Class, unless otherwise indicated.

5 **FIRST CAUSE OF ACTION**

6 **UNLAWFUL DEDUCTION OF WAGES UNDER LABOR CODE SECTION 221**

7 **(All Plaintiffs Against All Defendants)**

8 29. Plaintiffs re-allege and incorporate paragraphs 1 through 28 inclusive, of this
9 Complaint as though fully set forth herein.

10 30. Defendants' commission system resulted in deductions from commission actually
11 earned by operation of its rollover points system for weeks an Employee did not meet the set quota.
12 Once a commission is earned, it is considered a wage which is unlawful for an employer to recoup.
13 *See Koehl v. Verio, Inc.* (2006) 142 Cal. App. 4th 1313, 1329-1337. Furthermore, Defendants
14 accumulated the deficit points against Employees but not commission points earned in excess of
15 the quota.

16 31. As a result of Defendants' unlawful policies and acts, Plaintiffs are owed unpaid
17 wages plus interest, penalties, and attorneys' fees and costs.

18 **SECOND CAUSE OF ACTION**

19 **UNAUTHORIZED DEDUCTION OF WAGES IN VIOLATION OF LABOR CODE**

20 **SECTION 224**

21 **(All Plaintiffs Against All Defendants)**

22 32. Plaintiffs re-allege and incorporate paragraphs 1 through 31, inclusive, of this
23 Complaint as though fully set forth herein.

24 33. Defendants subjected Plaintiffs to its commission-based system without express
25 written consent or acknowledgement. As earlier alleged and explained, Defendants commission
26 policy operates to deduct from commissions actually earned. There is strong public policy
27 requiring an express agreement from the employee to an employer's right to recoup or charge back
28 commission under specific circumstances. *See Koehl*, 142 Cal. App. 4th at 1334. Thus, Defendants

1 failure to inform Plaintiffs of operation and terms of its commission system makes the deductions
2 to commissions earned unauthorized and unlawful.

3 34. As a result of Defendants' unlawful acts and omissions, Plaintiffs are owed unpaid
4 wages plus interest, penalties, and attorneys' fees and costs.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE FOR REASONABLE AND NECESSARY BUSINESS**

7 **EXPENSES UNDER LABOR CODE SECTION 2802**

8 **(All Plaintiffs Against All Defendants)**

9 35. Plaintiffs re-allege and incorporate paragraphs 1 through 34, inclusive, of this
10 Complaint as though fully set forth herein.

11 36. Defendants have failed to reimburse Plaintiffs for costs and expenses the Plaintiffs
12 incurred when they were required to use their personal property as a necessary part of performing
13 their job duties for Defendants thereby relieving Defendants of those business expenses.

14 37. As a result of the unlawful acts of Defendants, and each of them, Plaintiffs and the
15 Class are owed expense reimbursement in amounts to be proven at trial, and are entitled to
16 recovery of such amounts, plus interest, penalties, and attorney's fees and costs.

17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAWS, CAL. BUSINESS &**

19 **PROFESSIONS CODE SECTION 17200**

20 **(All Plaintiffs Against All Defendants)**

21 38. Plaintiffs re-allege and incorporate paragraphs 1 through 37, inclusive, of this
22 Complaint as though fully set forth herein.

23 39. By the conduct described above, Defendants have violated the provisions of the
24 Labor Code, and the Unfair Competition Law, codified at Business & Professions Code Sections
25 17200 et seq. by engaging in unfair, unlawful, and oppressive activity.

26 40. The unlawful and unfair business practices conducted by Defendants are ongoing
27 and present a threat and likelihood of continuing against Defendants' current employees.

28 Accordingly, Plaintiffs and the Class seek preliminary and permanent injunctive relief.

PRAYER FOR RELIEF

- a. For unpaid costs and expenses, according to proof in the amount of \$ 7,200,000.00;
- b. For restitution of unpaid costs and expenses pursuant to Business & Professions Code Sections 17200 et seq.;
- c. For interest at the maximum legal rate;
- d. For attorney's fees authorized by statute;
- e. For costs of suit incurred herein; and
- f. For such other and further relief as the Court may deem just and proper.

Benjamin Law Group, P.C.

By

NA'IL BENJAMIN
Attorneys for Plaintiffs
William Uschold et al.

DEMAND FOR JURY TRIAL

43. Plaintiffs, on behalf of themselves and all others similarly situated, hereby requests a jury trial on the claims so triable.

Dated: January 16, 2018

By  Benjamin Law Group, P.C.
NA'IL BENJAMIN
Attorneys for Plaintiffs



Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
 - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
- **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
- **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center

2530 San Pablo Avenue, Suite A, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: www.seedscrc.org

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

Center for Community Dispute Settlement

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: www.trivalleymediation.com

CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services

Catholic Charities of the East Bay: Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: www.cceb.org

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

[illegible]

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the Initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: _____ An Initial Case Management Conference is scheduled for: _____

Date:

Time:

Department:

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):

- ☐ Court mediation ☐ Judicial arbitration
- ☐ Private mediation ☐ Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
--	---------------

Date:

(TYPE OR PRINT NAME) ▶ _____
(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME) ▶ _____
(SIGNATURE OF ATTORNEY FOR DEFENDANT)

EXHIBIT C

ENDORSED
FILED
ALAMEDA COUNTY

FEB 15 2018

CLERK OF THE SUPERIOR COURT
By DEBRA FURTADO
Deputy

1 JOANNA L. BROOKS, Bar No. 182986
2 MICHAEL W. NELSON, Bar No. 287213
3 LITTLER MENDELSON, P.C.
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5 1255 Treat Boulevard
Suite 600
6 Walnut Creek, CA 94597
7 Telephone: 925.932.2468
8 Fax No.: 925.946.9809

9 Attorneys for Defendant
10 NSMG SHARED SERVICES, LLC

11 (Sued herein erroneously as Northstar Memorial
12 Group; Northstar Memorial Group d/b/a Chapel of
13 the Chimes; Chapel of the Chimes; and NSMG
14 Shared Services, LLC d/b/a Northstar Memorial
15 Group Shared Services LLC)

16 SUPERIOR COURT OF CALIFORNIA

17 COUNTY OF ALAMEDA

18 WILLIAM USCHOLD and TYRONE
19 DANGERFIELD, each individually and on
20 behalf of others similarly situated,

21 Plaintiffs,

22 v.

23 NORTHSTAR MEMORIAL GROUP, et
24 al.,

25 Defendants.

Case No. HG18889297

ANSWER AND AFFIRMATIVE DEFENSES
OF NSMG SHARED SERVICES, LLC (Sued
herein erroneously as Northstar Memorial
Group; Northstar Memorial Group d/b/a Chapel
of the Chimes; Chapel of the Chimes; and
NSMG Shared Services, LLC d/b/a Northstar
Memorial Group Shared Services LLC)

26 Defendant NSMG Shared Services, LLC (Sued herein erroneously as Northstar
27 Memorial Group; Northstar Memorial Group d/b/a Chapel of the Chimes; Chapel of the Chimes; and
28 NSMG Shared Services, LLC d/b/a Northstar Memorial Group Shared Services LLC) ("Defendant")
hereby answers the Complaint filed by Plaintiffs William Uschold and Tyrone Dangerfield
(collectively, "Plaintiffs"), on behalf of themselves individually and a putative class of allegedly
similarly situated persons ("the putative class members"), in the above-referenced action. By
asserting the following affirmative defenses, Defendant does not acknowledge that it bears the
burden of proof as to any of those defenses or any of the elements thereof.

1 **GENERAL DENIAL**

2 Pursuant to the provisions of the California Code of Civil Procedure ("Code of Civil
3 Procedure") section 431.30(d), Defendant denies generally and specifically each and every
4 allegation contained in the Complaint, and each and every cause of action set forth therein.
5 Defendant further denies that Plaintiffs or any putative class member have been damaged, as alleged
6 or at all, in any manner or amount whatsoever as a result of any of the alleged act or omission by
7 Defendant or any agent of Defendant. Defendant further denies that this case is appropriate for class
8 treatment.

9 **AFFIRMATIVE DEFENSES**

10 Defendant asserts the following affirmative defenses and other defenses designated,
11 collectively, as "affirmative defenses." Defendant's designation of defenses as "affirmative" is not
12 intended in any way to alter Plaintiffs' burden of proof with regard to any element of their causes of
13 action. Defendant also expressly denies the existence of any alleged putative group of persons that
14 Plaintiffs purport to represent in this lawsuit. Defendant incorporates (as if fully set forth herein)
15 this express denial with each and every reference to "Plaintiffs" and "putative class members."

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Failure to State a Claim)**

18 As a separate and distinct affirmative defense, Defendant alleges that the Complaint,
19 and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause
20 of action upon which relief may be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 **(Statute of Limitations)**

23 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs'
24 claims, as well as those of the putative class members, are barred, in whole or in part, by the
25 applicable statute(s) of limitations, including, but not limited to, Code of Civil Procedure sections
26 338(a), 340 and 343, Labor Code section 203, and California Business and Professions Code
27 ("Business and Professions Code") section 17208.
28

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Failure to Exhaust Other Remedies)**

3 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs failed
4 to properly exhaust all contractual, administrative and/or statutorily required remedies prior to filing
5 suit, and that such failure bars this suit in whole or in part.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(No Standing)**

8 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs, as
9 well as the putative class members, lack standing to bring this action for, and the Court lacks
10 jurisdiction to award, certain penalties sought in the Complaint, as there is no private right of action
11 to recover such penalties.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(De Minimis)**

14 As a separate and distinct affirmative defense, Defendant alleges that, to the extent
15 Plaintiffs have alleged a violation of the Labor Code based on alleged time spent by Plaintiff and the
16 putative class members on work-related activities for which compensation was owed but not paid,
17 any such time was *de minimis* such that no further compensation is owed to Plaintiff or the putative
18 class members.

19 **SIXTH AFFIRMATIVE DEFENSE**

20 **(Avoidable Consequences Doctrine)**

21 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
22 and each cause of action therein are barred by the doctrine of avoidable consequences. Plaintiff and
23 the putative class members could have taken reasonable steps to avoid or mitigate the damages
24 claimed, for example: complaining to Defendant about the alleged issues with the commission
25 system or reimbursement of expenses or other concerns regarding their compensation. Plaintiffs as
26 well as putative class members are barred from recovering damages for lost wages, or any recovery
27 for lost wages must be reduced, if and to the extent Plaintiffs or any putative class members failed to
28 exhaust internal remedies to receive alleged unpaid wages or otherwise exercise reasonable diligence

1 to mitigate their alleged damages, if any. As Plaintiffs and the putative class members failed to
 2 mitigate the damages allegedly suffered, if any such damages there were, or are, such failure to
 3 mitigate bars and/or diminishes any recovery against Defendant.

4 SEVENTH AFFIRMATIVE DEFENSE

5 (Timely Wage Payments)

6 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff, as well
 7 as any putative class members' claims for penalties, including, but not limited to penalties predicated
 8 on Labor Code sections 201-204, are barred because (1) there are *bona fide* disputes as to whether
 9 Defendant failed to timely pay all wages due, (2) there are *bona fide* disputes as to whether
 10 Defendant failed to present wage statements on a timely basis, and (3) Defendant has not willfully
 11 failed to pay such compensation, if any is owed.

12 EIGHTH AFFIRMATIVE DEFENSE

13 (Good Faith)

14 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs are
 15 not entitled to any remedy or penalty award under California Business and Professions Code §
 16 17200, *et. seq.*, or California Labor Code sections 201-204, 221, 224, 510, 512, 2802 or any
 17 applicable IWC Wage Order because Defendant did not willfully fail to comply with the
 18 compensation provisions of the California Labor Code, or any applicable Wage Order, but acted in
 19 good faith and had reasonable grounds for believing it did not violate them.

20 NINTH AFFIRMATIVE DEFENSE

21 (Laches, Estoppel, Unclean Hands, Consent, Waiver, Release, Unjust Enrichment)

22 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs'
 23 claims, as well as those of the putative class members, are barred in whole or in part by the
 24 doctrine(s) of laches, estoppel, unclean hands, consent, waiver, release, and/or unjust enrichment.

25 TENTH AFFIRMATIVE DEFENSE

26 (Double Recovery Barred)

27 As a separate and distinct affirmative defense, Defendant alleges that, to the extent
 28 multiple penalties are sought for the same alleged violations, such claims are barred by the

1 prohibition on double recovery.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 **(Proximate Cause)**

4 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs'
5 alleged injuries, or alleged injuries of any member of the putative class, were not proximately caused
6 by any allegedly unlawful policy, custom, practice and/or procedure promulgated and/or tolerated by
7 Defendant.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 **(Accord and Satisfaction)**

10 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs'
11 claims fail because Plaintiff and all members of the putative class have been fully paid all amounts
12 legally owed by Defendant, and by accepting the payments made to them, Plaintiffs and the putative
13 class members have effectuated an accord and satisfaction of their claims.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 **(Offset)**

16 As a separate and distinct affirmative defense, Defendant alleges that any award to
17 Plaintiffs or the putative class members must be offset by the value of any monies and/or benefits
18 Defendant paid to Plaintiffs and the putative class members that were not owed.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 **(No Injunctive or Declaratory Relief)**

21 As a separate and distinct affirmative defense, Defendant alleges that any claim for injunctive
22 or declaratory relief is barred because Plaintiffs lack standing to seek such relief.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 **(No Equitable Relief)**

25 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs'
26 claims for equitable relief, as well as those of the putative class members, are barred, in whole or in
27 part, on the grounds that Plaintiff and the putative class members have adequate remedies at law.

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 **(Excessive Fines)**

3 As a separate and distinct affirmative defense, Defendant alleges that an award of
4 civil penalties in this case would result in the imposition of excessive fines in violation of the Eighth
5 Amendment to the United States Constitution and Article I, Section 7 of the California Constitution.
6 *People ex rel Lockyer v. R.J. Reynolds Tobacco Co.* 37 Cal. 4th 707 (2005).

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 **(No Class Action)**

9 As a separate and distinct affirmative defense, Defendant alleges, as to each purported
10 cause of action set forth in the Complaint as a class action, that this suit may not be properly
11 maintained as a class action because: (1) Plaintiffs have failed to plead, and cannot establish the
12 necessary procedural elements for, such treatment; (2) a class action is not an appropriate method for
13 the fair and efficient adjudication of the claims described in the Complaint; (3) common issues of
14 fact or law do not predominate, rather, to the contrary, individual issues predominate; (4) Plaintiffs'
15 claims are not typical of the claims of the putative class members; (5) Plaintiffs and alleged putative
16 class counsel are not adequate representatives for the alleged putative class; and (6) a well-defined
17 community of interest in the questions of law and/or fact affecting Plaintiffs and the putative class
18 members does not exist.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 **(Business and Professions Code ("B&P") § 17200 *et seq.*)**

21 As a separate and distinct affirmative defense, Defendant alleges that its business
22 practices were not "unfair," "unlawful," or "fraudulent" within the meaning of Business and
23 Professions Code section 17200 *et seq.*

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 **(No Standing-B&P Code § 17200, *et seq.*)**

26 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs
27 suffered no cognizable injury under California Business and Professions Code section 17200 *et seq.*,
28 and therefore lack standing to pursue a class action thereunder.

TWENTIETH AFFIRMATIVE DEFENSE**(No Class Action-B&P Code § 17200, *et seq.*)**

As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs' claims under California Business and Professions Code section 17200 *et seq.* do not constitute a proper class action, and Plaintiffs' claims are barred to the extent they seek recovery or remedies unavailable under the UCL.

TWENTY-FIRST AFFIRMATIVE DEFENSE**(Restitution Barred-B&P Code § 17200, *et seq.*)**

As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs' claims for restitution pursuant to California Business and Professions Code section 17200 *et seq.*, are barred to the extent they constitute claims for damages.

TWENTY-SECOND AFFIRMATIVE DEFENSE**(No Penalties-B&P Code § 17200, *et seq.*)**

As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs' claims for recovery pursuant to California Business and Professions Code section 17200 *et seq.* are barred with respect to penalties of any nature.

TWENTY-THIRD AFFIRMATIVE DEFENSE**(No Restitution, Disgorgement, Injunctive Relief-B&P Code § 17200, *et seq.*)**

As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs' claims for recovery in the form of restitution, disgorgement, or injunctive relief under California Business and Professions Code section 17200 *et seq.* are barred with respect to any alleged violations that have been discontinued, ceased, or are not likely to recur.

TWENTY-FOURTH AFFIRMATIVE DEFENSE**(Entitlement to Credit or Setoff)**

As a separate and distinct affirmative defense, Defendant alleges that, assuming Plaintiffs and/or the putative class are entitled to any unpaid wages, Defendant is entitled to a credit or setoff. This credit or setoff includes, but is not limited to, amounts erroneously overpaid to Plaintiffs, so as to prevent unjust enrichment of Plaintiffs and/or the putative class. The claims of

1 Plaintiffs and/or the putative class are barred because Plaintiffs and/or the putative class would be
2 unjustly enriched if they prevailed on any of said claims.

3 TWENTY-FIFTH AFFIRMATIVE DEFENSE

4 (Violation of Due Process)

5 As a separate and distinct affirmative defense, Defendant alleges that such a request for civil
6 penalties would violate Defendant's procedural, substantive and procedural due process rights (vis-à-
7 vis the Fourteenth Amendment of the United States Constitution and the Due Process and Equal
8 Protection Clauses in Article 1 of the California Constitution). *See State Farm Mutual Automobile*
9 *Insurance Company v. Campbell*, 538 U.S. 408 (2003) or *People ex. rel. Lockyer v. R.J. Reynolds*,
10 37 Cal. 4th 707 (2005).

11 TWENTY-SIXTH AFFIRMATIVE DEFENSE

12 (Claims Unconstitutionally Vague and Ambiguous)

13 As a separate and distinct affirmative defense, Defendant is informed and believes
14 that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges,
15 that the Complaint, and each cause of action set forth therein, or some of them, is barred because the
16 applicable Wage Orders of the Industrial Welfare Commission and California Business and
17 Professions Code sections 17200 *et seq.*, are unconstitutionally vague and ambiguous and violate
18 Defendant's rights under the United States Constitution and the California Constitution as to, among
19 other things, due process of law.

20 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

21 (Unfair Business Practices Claim Violates Due Process)

22 As a separate and distinct affirmative defense, Defendant alleges that prosecution of
23 this action under Business and Professions Code sections 17200 *et seq.*, as applied to the facts and
24 circumstances of this case, constitutes a denial of due process rights under the Fourteenth
25 Amendment to the United States Constitution and Article I, section 7 of the California Constitution.
26 That violation is both procedural, by imposing a procedure that would render it impossible for
27 Defendant to defend its interests and property; and substantive, by imposing remedies
28

1 constitutionally disproportionate to the wrongs committed. *See People ex rel Lockyer v. R.J.*
 2 *Reynolds Tobacco Company*, 37 Cal. 4th 707 (2005).

3 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

4 **(No Injury)**

5 As a separate and distinct affirmative defense, Defendant is informed and believes
 6 that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges,
 7 that the Complaint, and each cause of action set forth therein, or some of them, is barred because
 8 Plaintiffs and the putative class lack standing to sue under California Business and Professions Code
 9 sections 17200 and 17204 as they have not suffered any injury in fact or lost money or property as a
 10 result of any allegedly unlawful business practice of Defendant.

11 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

12 **(Failure to Reimburse Business Expenses – Expenses Not Job Related)**

13 Any claims for civil penalties pursuant to Labor Code section 2802 are barred
 14 because such expenses for which Plaintiffs and the alleged putative class members whom Plaintiffs
 15 seek to represent seek reimbursement were not incurred in direct consequence of the discharge of
 16 their duties and/or were not reasonable and/or were unnecessary.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 **(Fully Paid for Selling Activity)**

19 As a separate and distinct affirmative defense, Defendant alleges that to the extent
 20 Plaintiffs and/or putative class members were not engaged in selling activity during any working
 21 hours in which they were paid through commissioned wages, which Defendant denies, any such non-
 22 selling activity during those time periods was not endorsed, encouraged or otherwise permitted by
 23 Defendant and was contrary to Defendant's policy for commissioned salespersons.

24 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

25 **(Properly Compensated for Time Worked)**

26 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
 27 all putative class members were paid an hourly wage of at least the minimum wage for all hours
 28

1 worked, and as such, they were fully and lawfully compensated for all time worked under California
2 law.

3 THIRTY-SECOND AFFIRMATIVE DEFENSE

4 (Sales Exemption)

5 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
6 is barred because Plaintiff and/or the putative class members, or some of them, are exempt pursuant
7 to the either the inside sales exemption, outside sales exemption, or commission sales exemption
8 arising under the California Labor Code, applicable Wage Order(s) and all applicable regulations,
9 taking into account appropriate tacking of exemptions.

10 THIRTY-THIRD AFFIRMATIVE DEFENSE

11 (Written Agreement)

12 As a separate and distinct affirmative defense, Defendant alleges that the Complaint is barred
13 because Plaintiff and/or the putative class members, or some of them, entered into written
14 agreements providing for the advancement of commissions against earned commissions, which
15 allowed for reconciliation of same in compliance with California law.

16 THIRTY-FOURTH AFFIRMATIVE DEFENSE

17 (After-Acquired Evidence)

18 To the extent Defendant obtains through discovery or otherwise after-acquired
19 evidence of wrongdoing by Plaintiffs or putative class members, the Complaint and claims therein
20 are barred by the doctrine of after-acquired evidence, or the doctrine of after-acquired evidence
21 limits and reduces the Plaintiffs' and putative class members' alleged damages.

22 ADDITIONAL AFFIRMATIVE AND OTHER DEFENSES

23 Defendant presently has insufficient knowledge or information upon which to form a
24 belief as to whether there may be additional, as yet unstated, defenses and reserves the right to assert
25 additional defenses or affirmative defenses in the event discovery indicates such defenses are
26 appropriate.
27
28

PRAYER FOR RELIEF

WHEREFORE, Defendant prays:

1. This action not be certified as a class action;
2. Plaintiffs and the putative class members take nothing by way of the Complaint;
3. Plaintiffs' Complaint be dismissed in its entirety with judgment entered against Plaintiffs and in favor of Defendant on all of Plaintiffs' causes of action;
4. Plaintiffs be ordered to pay Defendant's attorneys' fees and costs as permitted by law, including but not limited to attorneys' fees and costs provided under California Labor Code section 218.5; and
5. Defendant be awarded such other and further relief as the Court deems just and proper.

Dated: February 15, 2018

Joanna L. Brooks

JOANNA L. BROOKS
MICHAEL W. NELSON
LITTLER MENDELSON, P.C.
Attorneys for Defendant
NSMG SHARED SERVICES, LLC
(Sued herein erroneously as Northstar
Memorial Group; Northstar Memorial Group
d/b/a Chapel of the Chimes; Chapel of the
Chimes; and NSMG Shared Services, LLC
d/b/a Northstar Memorial Group Shared
Services LLC)

Firmwide: 152672604.4 082187.1013

POS-040

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME JoAnna L. Brooks, Bar No. 182986; Michael W. Nelson, Bar No. 287213 FIRM NAME: Littler Mendelson, A Professional Corporation STREET ADDRESS: 1255 Treat Blvd., Suite 600 CITY: Walnut Creek STATE: CA ZIP CODE: 94597 TELEPHONE NO.: (925) 932-2468 FAX NO.: (925) 946-9809 E-MAIL ADDRESS: jbrooks@littler.com; mnelson@littler.com Defendant NSMG Shared Services, LLC erroneously sued as ATTORNEY FOR (name): Northstar Memorial Group, et al.		FOR COURT USE ONLY CASE NUMBER: HG18889297
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 24405 Amador Street MAILING ADDRESS: CITY AND ZIP CODE: Hayward, CA 94544 BRANCH NAME: Hayward Hall of Justice		
Plaintiff/Petitioner: William Uschold and Tyrone Dangerfield		JUDICIAL OFFICER:
Defendant/Respondent: North Star Memorial Group, et al.		DEPARTMENT:
PROOF OF SERVICE—CIVIL Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax		

*Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.*

- At the time of service I was over 18 years of age and not a party to this action.
- My residence or business address is:
1255 Treat Blvd., Suite 600, Walnut Creek, CA 94597
- ☐ The fax number from which I served the documents is (complete if service was by fax):
- On (date): February 15, 2018 I served the following documents (specify):
ANSWER AND AFFIRMATIVE DEFENSES OF NSMG SHARED SERVICES, LLC (Sued herein erroneously as Northstar Memorial Group; Northstar Memorial Group d/b/a Chapel of the Chimes; Chapel of the Chimes; and NSMG Shared Services, LLC d/b/a Northstar Memorial Group Shared Services LLC)
☐ The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).
- I served the documents on the person or persons below, as follows:
 - Name of person served: Na'il Benjamin, Esq. and Allyssa Villanueva, Esq.
 - ☐ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)
Business or residential address where person was served:
Benjamin Law Group, P.C., 1290 B. Street, Suite 314, Hayward, CA 94541
 - ☐ (Complete if service was by fax.)
Fax number where person was served:
- ☐ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).
- The documents were served by the following means (specify):
 - ☐ By personal service. I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

POS-040

CASE NAME: William Uschold, et al. v. Northstar Memorial Group, et al.	CASE NUMBER: HG18889297
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6. b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:
- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 15, 2018

Gina Camacho

(TYPE OR PRINT NAME OF DECLARANT)

► Gina Camacho

(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- ☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____	►	_____
(NAME OF DECLARANT)		(SIGNATURE OF DECLARANT)

PROOF OF SERVICE—CIVIL (Proof of Service)